IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 783 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZUBEKHABEN W/OF MEMAN GULABNABI VALIBHAI

Versus

AMINABEN R PATHAN

Appearance:

1. Civil Revision Application No. 783 of 1995

MR MK OZA for Petitioner No. 1-3

MR SANDIP C SHAH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 26/09/2003

ORAL JUDGEMENT

Heard ld. advocate Mr.MK Oza for the applicant and Mr. Sandip C Shah for the respondents no. 1 and 2.

The facts of the case suggest that the present applicant preferred one Motor Accident Claim Petition No. 623 of 1994 before the MAC Tribunal, Sabarkantha at Himatnagar with an application for condonation of delay as per sec. 5 of the Indian Limitation Act. The application for condonation of delay came to be filed on 9.6.1994. In the said application it was prayed that for the reasons mentioned in the application, the delay of six months and 19 days be condoned in preferring MAC Petition by the applicant. The said application ex.1 came to be heard by the MAC Tribunal, at Himatnagar in the said MAC Petition. After hearing the parties, ld. MAC Tribunal (Main) Himatnagar vide his order dated 2.2.1995 was pleased to dismiss the said application of present applicant on the ground that as per the decision of the Supreme Court in the matter of Vinod Gurdas Raiker v. National Insurance Co. Ltd., as reported in 1991 ACJ S.C., the applicant who is not entitled to benefits of amended provisions of sec. 166(3) of the Bombay Motor Vehicles Act, it is observed in the order that the application for condonation of delay came to be filed after the new Act came into force, the Tribunal was not entitled to entertain the said application and the application since was barred by time, was required to be rejected.

On hearing both the ld. advocates, it clearly appears that the matter is required to be considered in the light of the decision of the Supreme Court in the matter of Dhannalal v. D.P. Vijayvargiya and ors., as reported in AIR 1996 SC 2155. Before adverting to the ratio laid down by the Apex Court, it is worthwhile to note that the application for condonation of delay came to be filed by the present applicant on 9.6.1994, thereafter by Amending Act No. 53 of 1994, vide sec. 54 of the said Act, sub-section 3 of Sec. 166 came to be deleted with effect from 14.11.1994, meaning thereby that when sub-section 3 of sec. 166 of the Bombay Motor Vehicles Act, 1988 dealing with the limitation as discussed by the Tribunal came to be deleted on 14.11.1994, the application of the applicant for condonation of delay was pending before the MAC Tribunal for the consideration. When such is a situation that is when the new Act i.e. Amending Act No. 53 of 1994 came into force and the matters are under consideration before the Tribunal and the High Court in which the plea of limitation is to be decided as per the ratio laid down by the Apex Court in the above said case of Dhannalal vs. D.P. Vijayvargiya (supra), the benefit of deleting sub-sec. 3 of sec. 166 be extended to such proceedings and such application should not be declared to be time

barred. The Apex Court has observed that such claim petition cannot be thrown out on the ground that such claim petitions were barred by time when sub-section 3 of sec. 166 was in force. It was also observed by the Apex Court that the Parliament from time to time as introduced amendments in the Old Act as well as in the New Acts in order to protect the interest of the victims of the accident and their heirs, if the victims died. The Apex court further observed that deletion of sub-section 3 from sec. 166 should be given full effect so that the object of deletion of said sub-section by the Parliament is not defeated. It was further observed that if a victim of an accident and heirs of deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of period of limitation prescribed how the victim or the heirs of deceased shall be in worst position. If the question of condonation of delay of filing the claim petition is pending either before the Tribunal, High Court or Supreme Court. It is also observed that there is nothing in the Amending Act to show that benefit of deletion of sub-sec. 3 of sec. 166 is not to be extended to pending claim petitions where plea of limitation has been raised.

From the above, it is crystal clear that the order impugned under the revision is required to be set aside and the application of the applicant in MAC Petition No. 623/1994 is required to be allowed.

In the result, this revision application is allowed. The order impugned in this revision application passed by the ld. MAC Tribunal (Main), Sabarkantha at Himatnagar on 2.2.1995 in MAC Petition No. 623/1994 below Exh. 1 rejecting the application of the applicant for condonation of delay in filing MAC Petition is hereby quashed and set aside. The said application of the petitioner is allowed and since the benefit of the amended Sec. 166(3) of the Act is extended to the applicant and the claim petition is considered to be within period of limitation and ld. MAC Tribunal, Sabarkantha at Himatnagar is directed to register the same as MAC Petition and proceed to dispose of the same, according to law. Rule is made absolute to the above extent only with no order as to costs.

(J.R. VORA, J.)
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